

**STATE OF MICHIGAN  
BEFORE THE JUDICIAL TENURE COMMISSION**

*In re:*

**Hon. Norene S. Redmond**

38<sup>th</sup> District Court

16101 Nine Mile Road

Eastpointe, MI 48021

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Docket No. \_\_\_\_\_

Grievance Nos: 2006-16451

2006-16509

2006-16771

2006-16812

**DECISION AND RECOMMENDATION  
FOR ORDER OF DISCIPLINE**

At a session of the Michigan Judicial Tenure  
Commission at which the following  
Commissioners were

PRESENT: Hon. Jeanne Stempien, Chairperson  
Hon. Kathleen J. McCann, Vice Chairperson  
Thomas J. Ryan, Esq., Secretary  
Hon. Barry M. Grant  
Hon. Michael J. Talbot  
Diane M. Garrison  
Nancy J. Diehl, Esq.  
Ronald F. Rose  
Hon. Nanci J. Grant

**I. INTRODUCTION**

The Michigan Judicial Tenure Commission ("JTC") files this recommendation for discipline against Hon. Norene S. Redmond ("Respondent"), judge of the 38<sup>th</sup> District Court in Eastpointe, Macomb County, Michigan. Respondent is represented by Theresa M. Asoklis. This action is taken pursuant to the authority of the JTC under Article 6, §30 of the Michigan Constitution of 1963, as amended, and MCR 9.203.

The JTC, having conducted a preliminary investigation pursuant to MCR 9.207, and having received Respondent's consent to this recommendation, concludes that Respondent engaged in conduct contrary to the Code of Judicial Conduct and prejudicial to the administration of justice.

## **II. PROCEDURAL BACKGROUND**

The JTC conducted preliminary investigations of Grievance Nos. 06-16451, 06-16509, 06-16771, and 07-16812. On March 9, 2007, it issued a 28-day letter to Respondent, pursuant to MCR 9.207(C). Respondent replied on May 3, 2007.

The Examiner and Respondent engaged in negotiations to resolve these matters and entered into a Settlement Agreement, a copy of which is appended to this Decision and Recommendation as Attachment A. As a result of the negotiations, Respondent has consented to the resolution of these matters through an order of public censure by the Supreme Court, and will not request a hearing upon the JTC's submission of this Decision and Recommendation for Discipline. Based on Respondent's consent to this recommendation, the JTC concludes that Respondent engaged in misconduct contrary to the Code of Judicial Conduct and Michigan Court Rules. The JTC approves the Settlement Agreement.

## **III. FINDINGS OF FACT**

The JTC adopts the Stipulated Facts in the appended settlement Agreement as set forth here incorporates by reference the Stipulated Facts in the Settlement Agreement and makes

certain additional findings of fact based on the transcripts included in the Stipulated Facts and incorporates them into its Decision and Recommendation:

**A. THE STIPULATED FACTS**

1. Respondent is, and at all material times was, a judge, of the 38<sup>th</sup> District Court in Eastpointe, Michigan. With respect to Grievance No. 06-16451, Respondent was sitting as a judge of the 41A District Court (Shelby Township) acting pursuant to Joint Local Administrative Order D37 2005-01J. As a judge, she is subject to all the duties and responsibilities imposed on her by the Michigan Supreme Court, and is subject to the standards for discipline set forth in MCR 9.104 and MCR 9.205.

***Grievance No. 2006-16451***

2. On January 14, 2006, Jeannine Somberg's 16-year-old son, Nicholas, called 911 and reported that his mother hit him with a belt. The Shelby Township Police responded and noticed Nicholas had a red welt on his left arm. Nicholas refused to sign a statement.

3. Ms. Somberg, who was outside when the police arrived, was uncooperative with one of the officer's attempts to have her go inside. When the officer tried to arrest her, she ran into the house and locked herself and her 12-year-old autistic son in the bathroom. She eventually exited the bathroom. The Shelby Township officers arrested her for domestic violence and for resisting arrest and obstruction of justice.<sup>1</sup> The misdemeanor domestic violence charge carried a maximum sentence of 93 days and the felony resisting arrest and obstruction of justice charge carried a maximum of two years prison.

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<sup>1</sup> *People v Jeannine Lucido Somberg*, 41-A District Court Case No. 06-188 FY. A copy of the transcript of the bond hearing is attached and incorporated into the Stipulated Facts as Exhibit 1.

4. The following day, Sunday, January 15, 2006, Respondent presided over a bond hearing for Ms. Somberg, who was unrepresented. Respondent set bond at \$5,000.00/10%. Ms. Somberg, who had been transferred within the Macomb County Jail complex, awaited release upon her parents' payment of \$500. (Exhibit 1, TR 6)

5. After the bond hearing, there was a disturbance in the adjacent hallway. Ms. Somberg's 16-year-old son Nicholas referred to Respondent as an "asshole" out of the presence of Respondent and his mother. A law enforcement official relayed the incident to Respondent, who promptly went back on the record, approximately 15 minutes after the bond hearing had ended. Respondent then raised Ms. Somberg's bond to \$25,000.00 cash/surety without the knowledge or presence of Ms. Somberg, and without citing MCR 6.106(H)(2)(a):<sup>2</sup>

THE COURT: This is the matter of Jeannine Lucido Somberg. Miss. [sic] Somberg had been before me this morning on a domestic violence case, involving her son, her 16 year old [sic] son who was in the courtroom along with family members. I took the appropriate information set a conditional bond, and given the nature of what she told me, regarding a special needs son, I set the bond at \$5000.00, 10 percent.

Upon the bond being set, in the hallway, it came to my attention that there was an incident involving the sheriff's department and Shelby Township Police Officers, in which the alleged victim in this matter, was threatening in his manner and tone, along with other family members, and the 16 year old – was it the – the 16 year old [sic] proceeded to call me an asshole, in the officer's presence, which then was brought to my attention as well. And given the circumstances in this matter, and given the possible violent, and assaultive nature, not only of the alleged victim, the family and the Defendant, the bond will be \$25,000.00 cash surety only. All other terms and conditions apply. (Exhibit 1, TR 6)

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<sup>2</sup> Respondent contends that weekend bond hearings are routinely conducted at the Macomb County Jail by Macomb County district court judges and magistrates without the defendants being present either in person or via video link. The examiner cannot stipulate to that, but does not challenge it either.

6. At trial, a jury found Ms. Somberg not guilty of the underlying charge of domestic violence, but guilty of resisting and obstructing.

***Grievance No. 2006-16509***

7. James Braun was charged with two felonies: embezzlement from a vulnerable adult and larceny in a building, along with Isaac Lovell. The men had taken about \$800 in cash from the premises and had given an inflated estimate for a painting job to a 90-year-old woman. The woman paid them approximately \$3,000.00, which was excessive for the amount of work done.<sup>3</sup>

8. The maximum sentence for the embezzlement count is 5 years and/or \$10,000.00. The maximum sentence for the larceny count is a maximum sentence of four years and/or \$5,000.00.

9. On June 29, 2005, Respondent arraigned James Braun in 38<sup>th</sup> District Court.

10. There were television cameras in the courtroom. (Exhibit 2, TR 4)

11. Mr. Braun's attorney, George Michaels, pointed out that Mr. Braun had no prior adult or juvenile criminal record, no history of substance abuse or addiction, had recently moved with his parents and wife to Ortonville, Michigan, and would likely be sentenced to probation. He accordingly asked for a low bond to be set. (Exhibit 2, TR 4 – 6) Mr. Braun provided Respondent with his recently obtained Michigan telephone number, but had not yet changed his driver's license from Florida to Michigan. (Exhibit 2, TR 6 – 7)

12. Eastpointe Police Department Detective Neil Childs stated that the Police Department felt anyone who would take advantage of a 90-year-old is a threat to the public, that

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<sup>3</sup> *People v James Braun*, 38<sup>th</sup> District Court Case No. 05-7797. A copy of the bond hearing transcript is attached and incorporated into these Stipulated Facts as Exhibit 2.

the Police Department did not believe that Mr. Braun had ties to the area because he gave the police officers a North Fort Myers, Florida address and that Ortonville is not considered close, and that the vehicle Mr. Braun was riding in with the co-Defendant had work orders from Delaware.<sup>4</sup> Detective Childs asked for the highest possible bond that the Court felt was appropriate. (Exhibit 2, TR 7 – 10)

13. Respondent set bond for Mr. Braun at \$750,000.00.

14. After the matter went to Circuit Court, the embezzlement-from-a-vulnerable-adult and larceny-in-a-building charges against Mr. Braun were dropped pursuant to a plea agreement. He pled no contest to a charge of false pretenses and was sentenced to one year probation with credit for 12 days served.

15. Isaac Lovell was charged with two felonies: embezzlement from a vulnerable adult and larceny in a building, along with James Braun. The men had taken about \$800 in cash from the premises, and had given an inflated estimate for a painting job to a 90-year-old-woman. The woman paid them approximately \$3,000.00, which was excessive for the amount of work done.<sup>5</sup>

16. The maximum sentence for the embezzlement count is 5 years and/or \$10,000.00. The maximum sentence for the larceny count is a maximum sentence of four years and/or \$5,000.00.

17. On June 29, 2005, Respondent arraigned Isaac Lovell. Mr. Lovell's attorney, Michael J. Dennis, pointed out that Mr. Lovell had a minimal prior criminal history, was married, had an 11-month-old child, and had recently established ties with the community of

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<sup>4</sup> The vehicle, however, belonged to Mr. Braun's co-defendant, Isaac Lovell and his wife, and was registered to Elizabeth Ann Riley in Ortonville, Mr. Lovell's wife. Exhibit 2, TR 8 – 10) The Lovells had moved to Michigan from Delaware. (Exhibit 3, TR 3-4)

Ortonville, Michigan, having purchased a mobile home where he and his family lived in a trailer park in a mobile home he had purchased. (Exhibit 3, TR 3 – 4)

18. Eastpointe Police Department Detective Neil Childs pointed out that Mr. Lovell's criminal history dated back to 1996 in Florida for driving while license suspended, 1998 (Osceola County) for domestic violence battery, 2001 (Pinellas Park Police) for driving while license suspended, an obstruction charge for failing to appear on the driving while license suspended, 2004 for driving while license suspended in Orange County, and 2004 driving under the influence and driving while license suspended. On behalf of the Eastpointe Police Department, Detective Childs said that they had to assure the alleged victim that she and the other residents of the state that they will be protected. Detective Childs pointed out that Mr. Lovell have given an out-of-state address to the officers. Detective Childs expressed concerns about Mr. Lovell's ties to the area and whether or not he would return to court. Detective Childs also pointed out that Mr. Lovell appeared in the NABI ('National Association of Bunco Investigators') book, by name, picture, and date of birth as a "traveler" who has had contact with this type of activity at some point in his past. (Exhibit 3, TR 7 – 8)

19. Respondent set bond for Mr. Lovell at \$1,000,000.00.

20. After the matter went to circuit court, the embezzlement-from-a-vulnerable-adult and larceny-in-a-building charges against Mr. Lovell were dropped pursuant to a plea agreement. He pled no contest to a charge of false pretenses and was sentenced to one year probation with credit for 12 days served.

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<sup>5</sup> *People v Isaac Lovell*, 38<sup>th</sup> District Court Case No. 05-7796. A copy of the bond hearing transcript is attached and incorporated into these Stipulated Facts as Exhibit 3.

***Grievance Nos. 2006-16771 and 2007-16812***

21. Carmen Granata, a 23-year-old veterinarian technician, was cited on November 5, 2006, for violating the city noise ordinance.<sup>6</sup>

22. Ms. Granata admitted hosting a large party. After attending a concert some of the guests returned. Neighbors called the police to complain about the noise. The police initially did not observe any violations but advised Ms. Granata about the complaints. Some time around 4:00 a.m., one of the guests went outside to use a cell phone, and yelled or spoke loudly. The police, who were waiting in a car down the street, approached and ticketed Ms. Granata.

23. On November 21, 2006, Ms. Granata appeared before Respondent in *pro per*. She pled guilty to the misdemeanor noise violation. Ms. Granata had no prior criminal record. The maximum penalty for the ordinance violation was 90 days and/or \$500.00.

24. During the hearing, Respondent read a petition from certain of Ms. Granata's neighbors who complained about the parties and number of guests who frequented Ms. Granata's house, allegedly causing disturbances. Respondent did not disclose that she knew some of the neighbors. Respondent also read favorable letters from certain of Ms. Granata's neighbors into the record.

25. Respondent allowed three of Ms. Granata's neighbors who had signed the petition, Jeffrey and Melissa Walsh, and Richard Jordan to speak out about their past experiences with Ms. Granata. Respondent does not contest that Richard Jordan was himself arrested in front of Ms. Granata's house for disorderly conduct and resisting arrest the night she was ticketed. Neither Mr. Jordan nor law enforcement officials disclosed this fact to Respondent on the record.

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<sup>6</sup> *City of Eastpointe v Carmen Maria Granata*, 38<sup>th</sup> District Case No. 06B107898. A copy of the plea/sentence hearing transcript is attached and incorporated into these Stipulated Facts as Exhibit 4.

26. Respondent referred to Ms. Granata's neighbors as "the people who built this damn city" and agreed with one of them, "I wouldn't be scared of them either. They're just punks." Respondent repeatedly referred to Ms. Granata's residence as a "flophouse" and how she would be "livid" by the alleged activity. (Exhibit 4, TR 6, 11, 12, 13, 21)

27. Respondent imposed a sentence upon Ms. Granata which included fines and costs, and two years reporting probation with the first 30 days served in the Macomb County Jail, and several other strict terms, including, but not limited to, reporting twice monthly, daily preliminary breath tests at the police department and 38<sup>th</sup> District Court, subsection to home visits, 100 hours of community service, no parties unless approved by the neighbors who signed the petition, and no one to spend the night at her home except Ms. Granata and her brother who reside there. (Exhibit 4, TR 37 – 39)

28. On November 28, 2006, Respondent granted Ms. Granata's *Ex-Parte* Emergency Motion for Work Release. On December 4, 2006, Respondent denied Ms. Granata's motion to set aside the plea.

#### **B. ADDITIONAL FINDINGS OF FACTS**

Based on the Stipulated Facts and the relevant transcripts included therein, the JTC makes certain additional findings of fact as follows:

#### ***Grievance No. 06-16451 (People v Somberg, Case No. 06-188 FY)***

1. Respondent initially set bond for Ms. Somberg in the amount of \$5,000.00/10%. Minutes after Ms. Somberg had been removed, Ms. Somberg's 16-year-old son Nicholas was overheard in the hallway referring to Respondent as an "asshole" by county officials, who

reported the incident to Respondent. Respondent went on the record 15 minutes after the bond hearing had concluded and increased Ms. Somberg's bond to \$25,000.00 cash or surety, referring to the "asshole" comment. Ms. Somberg's parents had already gone to pay the original \$500.00 bond to get her released, learned it had been changed to a \$25,000.00 cash bond and returned to court. Approximately half an hour later, Respondent went on the record again with Ms. Somberg's parents and son present. Nicholas Somberg acknowledged he was the one at fault, and repeatedly asked to be punished instead of his mother, either by being jailed or placed in juvenile detention until Tuesday. Respondent castigated him for his behavior but did not lower the bond or reinstate the original bond.

2. Respondent asserted her decision to increase the bond was to "protect" the family from potential domestic violence. She had, however, already issued a no contact except for mental health order between Ms. Somberg and Nicholas.

***Grievance File No. 06-16509 (People v James Braun, Case No. 05-7797 and People v Isaac Lovell, Case No. 05-7796)***

3. Respondent's comment, in response to Mr. Braun's attorney's observation that considering all the circumstances his client would undoubtedly get probation, to the effect that it was a shame if convicted that that was the case, contributed to the appearance that the grossly excessive bails she set for Mr. Braun (\$750,000) and Mr. Lovell (\$1,000,000) were intended to be punitive.

***Grievance File Nos. 06-16771, 07-16812 (People v Granata, Case No. 06B107898)***

4. Notwithstanding the petition signed by some of the defendant's neighbors complaining about parties at her house and the loud and occasionally gross behavior by some of the guests, Respondent repeatedly permitted neighbors who were present to interrupt and further challenge the 23-year-old unrepresented defendant. Respondent failed to maintain appropriate decorum, engaged in similar conduct by echoing some of the neighbors' comments and complaints regarding alleged incidents not part of the noise violation charge to which the defendant had pled guilty, contributing to the appearance that Respondent was motivated by personal ire and to seek public approbation in sentencing Ms. Granata as she did.

**IV. STANDARD OF PROOF**

The standard of proof in a judicial discipline proceeding is by the preponderance of the evidence. *In re Noecker*, 472 Mich 1, 8; 691 NW2d 440 (2005).

**V. CONCLUSIONS OF LAW**

In *People v Somberg*, Case No. 06-188 FY, Respondent's act of increasing Ms. Somberg's bond without her knowledge, notice or presence, minutes after being referred to as an "asshole" by Ms. Somberg's disturbed 16-year-old son and out of Respondent's presence, can only be viewed as a retaliatory, unjustifiable response. Respondent's attempts to defend her action when questioned by family members as to why Ms. Somberg was being punished for something she did not do and knew nothing about, by claiming her act was intended to "protect" the family from potential domestic violence makes no sense. Respondent had already issued a

no contact except for mental health order between Ms. Somberg and the teen-aged son who initiated the havoc by calling the police after his mother hit him on the arm and then refusing to sign a complaint when they arrived. Further, she had no knowledge as to the financial resources of Ms. Somberg's parents, or what indebtedness they were willing to undertake to secure her release. In fact, Ms. Somberg was released that day, rendering Respondent's purported defense invalid and strengthening the conclusion that she abused her judicial power to get back at a surly 16-year-old by punishing his mother.

In *People v James Braun*, Case No. 05-7797 and *People v Isaac Lovell*, Case No. 05-7796, it is apparent that Respondent abused her authority and discretion for improper purposes – punitive acts meant to guarantee some jail time, and to garner publicity, as there were television cameras in the courtroom at the ready. Respondent's decision to set bonds of \$750,000.00 and \$1,000,000.00 on two men, one of whom had no criminal history whatsoever, and the other a relatively minor history, for a non-violent crime involving charging \$3,000.00 for a paint job to a 90-year-old woman and removing \$800 cash from the premises was clearly punitive and intended to show the public how tough she was on crime. Respondent expressed her dissatisfaction with the fact that if Mr. Braun were convicted, he would only get probation, commenting “[t]hat’s the unfortunate nature of the sentencing guidelines,” a further testament to Respondent's obvious attempt to seek approval from the public at the expense of the defendants' rights to appropriate bail considerations. The excessive bond set by Respondent was more in keeping with a first degree murder charged against a wealthy individual rather than a single non-violent act by an individual living in a mobile home park.

In *People v Carmen Granata*, Case No. 06B107898, Carmen Granata, a 23-year-old veterinarian technician, was cited on November 5, 2006, for violating the city noise ordinance. Ms. Granata had held a party. After attending a concert, some of the guests returned. Neighbors called the police to complain about noise. The police did not find any violations at the time, but advised Ms. Granata about the complaints. Sometime around 4:00 a.m., one of the party guests went outside and was speaking loudly or yelling into a cell phone. The police, who were in a car down the street, went to the house and ticketed Ms. Granata, since she was the homeowner.

At the hearing, Ms. Granata, who was *in pro per*, pled guilty to the noise ordinance violation. Three of Ms. Granata's neighbors, a couple and another individual (who apparently was arrested himself for disorderly conduct that night), presented a petition signed by certain families in the neighborhood which Respondent read into the record, along with some letters of support by other neighbors. Respondent permitted the three individuals to repeatedly lambaste Ms. Granata with a litany of complaints which Respondent frequently joined, in an undignified, unprofessional manner that demonstrated a lack of judicial dignity and decorum. Based on Respondent's handling of the hearing and harsh sentence, it appears Respondent was again framing herself as a hardnosed judge seeking approval from her "constituents," at the expense of Ms. Granata's constitutional right to a proportionate sentence.

Respondent's conduct, as drawn from the Stipulated Facts, constitutes:

- a. Misconduct in office as defined by the Michigan Constitution of 1963, as amended, Article VI, §30 and MCR 9.205;
- b. Conduct clearly prejudicial to the administration of justice, as defined by the Michigan Constitution of 1963, as amended, Article VI, §30, and MCR 9.205;

- c. Failure to establish, maintain, enforce and personally observe high standards of conduct so that the integrity and independence of the judiciary may be preserved, contrary to the Michigan Code of Judicial Conduct (“MCJC”), Canon 1;
- d. Failure to bear in mind that the judicial system is for the benefit of the litigant and the public, not the judiciary, contrary to MCJC, Canon 1;
- e. Conduct involving impropriety and the appearance of impropriety, thereby eroding public confidence in the judiciary, in violation of MCJC, Canon 2A;
- f. Failure to respect and observe the law and to conduct oneself at all times in a manner which would enhance the public’s confidence in the integrity and impartiality of the judiciary, contrary to MCJC, Canon 2B;
- g. Allowing family, social, or other relationships to influence judicial conduct or judgment, in violation of MCJC, Canon 2C;
- h. Failure to be patient, dignified, and courteous to those being dealt with in an official capacity, contrary to MCJC, Canon 3A(3);
- i. Failure to adopt the usual and accepted methods of doing justice; failure to avoid the imposition of humiliating acts or discipline, not authorized by law in sentencing; and failure to endeavor to conform to a reasonable standard of punishment, contrary to MCJC, Canon 3A(9);
- j. Demonstrating a severe attitude toward witnesses, tending to prevent the proper presentation of the cause or ascertainment of the truth, and failure to avoid a controversial manner or tone in addressing litigants or witnesses, in violation of MCJC, Canon 3A(8);
- k. Setting grossly excessive bail amounts and failing to appropriately and reasonably consider the provisions of MCR 6.106 regarding bond.
- l. Setting harsh and excessive bail, and inflicting unusual punishment, contrary to Michigan Const. 1963, Art. I, §16.

- m. Setting harsh and excessive bail and inflicting unusual sentence, in violation of U.S. Const. Am. VIII: “Excessive bail shall not be required, nor excessive fines imposed, no cruel and unusual punishments inflicted.”
- n. Persistent failure to treat persons fairly and courteously, contrary to MCR 9.205 (B)(1)(c);
- o. Conduct prejudicial to the administration of justice, in violation of to MCR 9.104(1);
- p. Conduct that exposes the legal profession or courts to obloquy, contempt, censure or reproach, contrary to MCR 9.104(2);
- q. Conduct contrary to justice, in violation of MCR 9.104(A)(3); and
- r. Conduct that violates the standards or rules of professional responsibility adopted by the Supreme Court, contrary to MCR 9.104(4).

## VI. DISCIPLINARY ANALYSIS

### A. *Brown* factors

The JTC has considered the criteria for assessing proposed sanctions set forth by the Court in *In re Brown*, 461 Mich 1291, 1292-1293; 625 NW2d 744 (2000). A discussion of each relevant factor follows.

#### (a) **misconduct that is part of a pattern or practice is more serious than an isolated instance of misconduct**

Respondent’s actions provide evidence of a pattern of misconduct with respect to ordering excessive bonds in certain cases, as well as reacting personally to certain matters. In *Matter of Mikesell*, 396 Mich 517, 539 (1976), the Supreme Court found an adequate factual

basis “to support a finding of an emerging pattern of hostile conduct. . .” The Court quoted approvingly from *In re Kelly*, 238 So 2d 565, 566 Fla 1970):

Conduct unbecoming a member of the judiciary may be proved by evidence of specific major incidents which indicate such conduct, or it may also be proved by evidence of an accumulation of small and ostensibly innocuous incidents which, when considered together, emerge as a pattern of hostile conduct unbecoming a member of the judiciary.

**(b) misconduct on the bench is usually more serious than the same misconduct off the bench**

Respondent’s conduct in all four cases took place on the bench, in open court. In the *Braun* and *Lovell* hearings, television cameras were present. This factor militates in favor of a public sanction.

**(c) misconduct that is prejudicial to the actual administration of justice is more serious than misconduct that is prejudicial only to the appearance of propriety**

Respondent’s bond and sentencing practices are contrary to law. They violate the Code of Judicial Conduct, Michigan Court Rules, and the Michigan and U.S. Constitutions, and are prejudicial to the actual administration of justice. In *Somberg*, Respondent abused her discretion by excessively increasing a defendant’s bond, without the defendant’s notice or presence, to punish a third party for an unrelated incident. In *Braun and Lovell*, Respondent abused her discretion by imposing grossly excessive bonds in an apparent desire to punish the defendants beyond the sentences they would ultimately receive and to pander to a certain segment of the community by doing so in before television cameras to the detriment of the defendants. In

*Granata*, Respondent abused her discretion by imposing an excessive sentence, in part in an improper attempt to seek approval from a certain segment of the community. Respondent's remarks in each of the cases reflected an impermissible degree of personal umbrage.

**(d) misconduct that does not implicate the actual administration of justice, or its appearance of impropriety, is less serious than misconduct that does**

Respondent's actions in setting excessive bonds and sentences appeared dictated by personal umbrage and raised questions as to whether the defendants before her had the benefit of a fair, impartial, and unbiased judge. Her actions implicated the actual administration of justice and the appearance of impropriety.

**(e) misconduct that occurs spontaneously is less serious than misconduct that is premeditated or deliberated**

Respondent's actions varied from spontaneous to premeditated or deliberate. In the *Somberg* case, Respondent acted spontaneously when she raised the bond of Mrs. Somberg from \$5,000.00/10% to \$25,000.00 cash/surety for behavior actions comment the comments Rs defendant mother of a 16-year-old boy, based on an alleged deprecatory remark he made out of her presence and the defendant's presence. In the *Braun* and *Lowell* cases, Respondent's actions were premeditated, as demonstrated by the television cameras present when she assessed unwarranted and excessive bonds of \$750,000 and one million dollars against the defendants. In the *Granata* case, Respondent's actions also were premeditated, as demonstrated by her consideration of the petition submitted by the defendant's neighbors, her overall handling of the matter, the fact that she knew some of the petitioners, and the excessive sentence and probation terms she imposed against the defendant.

## **B. Related Disciplinary Considerations**

The Court has stated that the factors enumerated in *Brown* are not exclusive and recognized the JTC's ability to consider other "appropriate standards." *Id.* at 1293. The JTC has accordingly also considered Respondent's history with the JTC, including two prior admonitions and an appearance before a JTC subcommittee in arriving at its Decision and Recommendation.

## **VII. CONCLUSION AND RECOMMENDATION**

The JTC recognizes that judges must make decisions, and that they are granted considerable discretion in making them, including, for example, the setting of bonds. That discretion is not unlimited however, and when bail terms are so harsh or abusive as to be punitive, the imposition of such terms constitutes misconduct and conduct prejudicial to the administration of justice. The JTC also notes that the misconduct is not based on a single isolated incident, but four cases included in the negotiated settlement agreement.

Respondent's consent to the recommendation of discipline in the form of a public censure if misconduct is found, essentially constitutes a *nolo contendere* plea. Respondent admits her actions as described in the Stipulated Facts, but falls short of admitting misconduct or even the appearance of misconduct. Abusive bail practices have been found to constitute judicial misconduct in other jurisdictions.

In *Matter of Cannon*, 122 Cal. Rptr. 778, 537 P.2d 898 (1975), the California Supreme Court removed the judge for various acts of misconduct which included acting "unreasonably and arbitrarily in matters of bail-setting." *Id.* at 900. In a case reminiscent of Respondent's act in increasing Jeannine Somberg's bail from \$5,000/10% to \$25,000 cash/surety, after her 16-

year-old son referred to the judge as an “asshole” out of the presence of the judge and Ms. Somberg, Judge Cannon was charged, in part, with having arbitrarily increased bail in one case in which the defendant, who, after being denied release on his own recognizance, indicated his displeasure and stated he did not care what bail was set. Judge Cannon raised the bail in steps from \$3,000 to \$5,000, to \$10,000, and to \$20,000. She then stated, “and if you want \$50,000, we’ll make it \$50,000” which she did. *Id.* at 900.

In another case Judge Cannon found an accused minor and his mother in contempt of court and set bail at \$100,000 each when they audibly protested her arbitrary revocation of a certification of the minor to juvenile court as to certain charges and revoked bail when he refused to stipulate to a continuance of a preliminary hearing as to other charges. The Court found Judge Cannon had acted in bad faith and that such acts constitute wilful misconduct in office. *Id.* at 913. In discussing bad faith, the Court noted it also encompasses acts within the lawful power of a judge which nevertheless are committed for a corrupt purpose, *i.e.*, for any purpose other than the faithful discharge of judicial duties. *Id.* at 909.

In *Matter of Yengo*, 72 N.J. 425, 371 A.2d 41 (1977), the New Jersey Supreme Court found Judge Yengo’s actions in setting bail under the circumstances before him were “arbitrary, an abuse of discretion, not supported by a credible factual basis,” and “injudicious.” The Court concluded, based on the record, that the judge “considered bail as an arbitrary weapon for harassment of defendants.” In one example, the Court quoted Judge Yengo’s remarks to an unrepresented female defendant, charged with simple assault and battery arising from a drunken and disorderly street fracas, which are reminiscent of some of Respondent’s remarks in the *Granata* case:

‘Alice Martin, I have no sympathy for you whatsoever. You disgust me, and the decent living

people of Jersey City, and we are not going to tolerate your nonsense any longer. If I'm around to see to it. You are hereby sentenced to the Judson County Penitentiary for a period of 30 days on this complaint.' *Id.* at 51.

The Court noted requests for leniency that were presented to Judge Yengo by the defendant's brother-in-law and a public defender who appeared then and referred to the defendant's need to care for her two children, the fact that she had no prior criminal record, her part time work and meager earnings, and requested reconsideration. *Id.* at 52. The Court observed that "respondent's rejoinder discloses the motivation for his peculiar judicial philosophy, -- the seeking of public approbation." In language again similar to that displayed by Respondent in the transcripts included in the Stipulated Facts, the Court found that Judge Yengo "exhibited his prejudice by addressing the public defender as follows":

The facts presented to the Court don't impress the Court. \* \* \* I feel that this woman is a menace to society. I feel she's a disgrace. I feel she has harmed not only the police, the public at large and yours truly. I have no compassion for people who start trouble. . . *Id.*

During the proceedings, the public defender advised that he would be appealing, and requested bail pending appeal. The judge set bail at \$3,000. The public defender pointed out that it was a "disorderly persons offense at this point" and was joined by the prosecutor, who also stated a "more reasonable bail should be set" in light of the circumstances and recommended a \$100 cash bail. The judge refused, then acted as though he were conducting an auction in which he ultimately reduced the bail to "\$2,000 and that's it. The auction is over. I don't want to hear anything else." The Court found the judge's remarks and conduct harsh and arbitrary and his

attitude undignified. *Id.* at 53. He was removed for his unacceptable bail practices and several other acts of misconduct. The JTC agrees with the Court's apt comment that

[a]n intoxication with judicial power which would ignore basic constitutional precepts is a wholly unacceptable syndrome that cannot be tolerated . . . To brook it in a single courtroom would not only degrade the courts in general, but would affront the vast majority of municipal judges who perceive their courtrooms as 'place[s] of justice,' rather than arenas for exhibitionism by display, before an intimidated audience, of naked and illegal judicial power. *Id.* at 41.

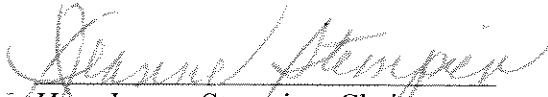
More recently, New York Judge Henry R. Bauer, who insisted he had done nothing wrong, was removed from the bench for abusing his bail discretion by setting "shockingly high bail" and in some cases failing to advise defendants of their right to counsel. *In re Bauer*, 3 N.Y.3d 158, 818 N.E.2d 1113 (2004). In one example, the judge had set bail at \$25,000 for a defendant charged with riding a bicycle at night on a sidewalk without appropriate lights. The maximum penalty for that offense was a \$100 fine but the defendant spent seven days in jail because he could not afford to satisfy the "illegally high bail." *Id.* at 163 – 164. The Court found that by jailing defendants for offenses that rarely, if at all, carry jail sentences upon conviction (as was argued by the defense attorneys in the *Braun* and *Lovell* cases stipulated to herein), the judge abrogated his duty and abused his judicial position. *Id.* at 162. The Court further observed:


We recognize that bail is discretionary and that there may be a wide range in the amounts set by reasonable judges. In reviewing petitioner's conduct, however, we see not an isolated instance of high or injudicious bail-setting, but a pattern of exorbitant bail so extraordinary that we must characterize it as abusive and coercive in the extreme. *Id.* at 163.

The JTC finds Respondent's bond and sentencing practices described herein and in the appended Settlement Agreement constitute judicial misconduct in office and conduct clearly prejudicial to the administration of justice. A judge is personally responsible for the judge's own behavior and for the proper conduct and administration of the court in which the judge presides. MCR 9.205(A). Respondent's actions in the above matters involve an abuse of judicial power and violate standards of judicial conduct, including the Code of Judicial Conduct: A judge should always beware that the judicial system is for the benefit of the litigant and the public, not the judiciary. Canon 1. Public confidence in the judiciary is eroded by irresponsible or improper conduct by judges. Canon 2A. At all times, the conduct and manner of a judge should promote public confidence in the integrity and impartiality of the judiciary." A judge should adopt the usual and accepted methods of doing justice; avoid the imposition of humiliating acts or discipline, not authorized by law in sentencing and endeavor to conform to a reasonable standard of punishment . . . Canon 3A(9). Based on the Stipulated Facts, Respondent violated the Michigan Constitution, Art 1 § 16 and U.S. Const. Am. VIII, as well as the various canons and court rules listed under "Conclusions of Law."

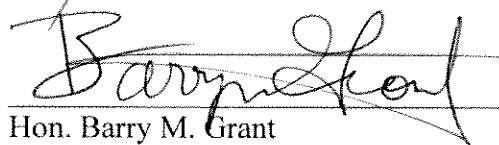
Respondent's conduct has been the subject of much controversy and criticism in the media, and has significantly harmed the public's perception of the judiciary. The JTC hopes public confidence in the integrity of the judiciary can be restored by the faithful workings of the judicial disciplinary system, and that by this process Respondent will take heed for the future. Accordingly, the JTC recommends that the Supreme Court publicly censure Respondent.

STATE OF MICHIGAN  
JUDICIAL TENURE COMMISSION

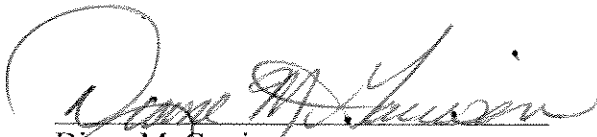
  
Hon. Jeanne Stempien, Chairperson

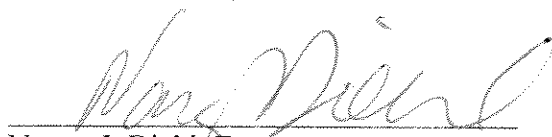
  
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DATED: July 18, 2007

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